



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Docket No. USCG-2023-0231

RIN 1625-AA09

Drawbridge Operation Regulation; Old River, between Victoria Island and Byron Tract, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments

SUMMARY: The Coast Guard is temporarily modifying the operating schedule that governs the draw of the California Department of Transportation (Route 4) highway bridge, mile 14.8 between Victoria Island and Byron Tract, CA. This action is necessary to allow the bridge owner to complete rehabilitation of the bridge after an unexpected delay in construction material delivery related to the COVID-19 pandemic, vandalism, and inclement weather.

DATES: This temporary interim rule is effective from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 5 p.m. on November 30, 2023.

Comments and related material must reach the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>. Type the docket number (USCG-2023-0231) in the “SEARCH” box and click “SEARCH”. In the Document Type column, select “Supporting & Related Material”.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary interim rule, call or e-mail Carl Hausner, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510-437-3516, e-mail Carl.T.Hausner@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations [Delete/add any abbreviations not used/used in this document]

CFR	Code of Federal Regulations
Caltrans	California Department of Transportation
CADFW	California Department of Fish and Wildlife
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. This bridge is non-operational and will be non-operational until rehabilitation work can be completed.

On October 27, 2022 the Coast Guard issued a General Deviation which allowed the bridge owner, Caltrans, to deviate from the current operating schedule in 33 CFR 117.183 to conduct major mechanical and electrical rehabilitation of the bridge. Due to delays in procuring materials, vandalism of critical electrical submarine cables, and an active winter storm season, the project will run past the end date of April 23, 2023 of the General Deviation. The bridge cannot be brought back to operating condition until the delivery of the critical Program Logic Control circuit and the replacement or repairs to the submarine cable can be made. Therefore, there is insufficient time to provide a reasonable comment period and then consider those comments before issuing the modification.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it

effective in less than 30 days after publication in the **Federal Register**. For reasons presented above, delaying the effective date of this rule would be impracticable and contrary to the public interest due to the fact that the bridge is currently inoperable and will not be back into operation until the rehabilitation work can be completed.

We are soliciting comments on this rulemaking. If the Coast Guard determines that changes to the temporary interim rule are necessary, we will publish a temporary final rule or other appropriate document.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this temporary interim rule under authority in 33 U.S.C. 499. The Coast Guard is modifying the operating schedule that governs the California Department of Transportation (Route 4) highway bridge, mile 14.8 between Victoria Island and Byron Tract, CA. The Caltrans Route 4 highway bridge has a vertical clearance, in the closed position, of 12.7 feet at mean high water and unlimited vertical clearance when opened.

The existing drawbridge regulation, 33 CFR 117.183, states that the draw of the California Department of Transportation (Route 4) highway bridge, mile 14.8 between Victoria Island and Byron Tract, shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8. Caltrans, the bridge owner, has requested this modification as additional time is required to complete the bridge rehabilitation.

Drawtender logs, during a previous test deviation conducted May 5, 2021 to August 7, 2021, recorded the following number of CADFW vessel openings: four in May, eight in June, four in July, and two in August. One survey vessel passed in July. No recreational or commercial vessels requested an opening of the bridge span during that 90-day test deviation.

IV. Discussion of the Rule

The Coast Guard is issuing this rule, which permits a temporary deviation from the operating schedule that governs the California Department of Transportation (Route 4)

highway bridge, mile 14.8 between Victoria Island and Byron Tract, CA. This rule allows the bridge to be secured in the closed-to-navigation position through 5 p.m. on November 30, 2023.

As part of the rehabilitation of the bridge, Caltrans has removed and is replacing all the electronics as well as key mechanical components that control the operation of the swing span. On January 31, 2023, vandals caused damage to one of the three newly installed custom-made submarine cables. On April 1, 2023 the contractor informed Caltrans that the custom-made Program Logic Control circuit, which is the circuit that controls the operation of the swing span, was delayed due to supply chain issues. These two critical components of bridge operations, as well as an active storm season, have caused the delay of the completion of the rehabilitation of the bridge. Currently, the swing span remains inoperable until rehabilitation work is completed. The anticipated completion of the rehabilitation work is November 30, 2023.

V. Regulatory Analyses

We developed this temporary interim rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the fact that little or no commercial or recreational vessel traffic will be impacted by this rule. Furthermore, the swing span of the bridge, as of date of the publication of this rule, is not operational and cannot resume operations until delivery of delayed parts and the repair to or replacement of the vandalized electrical

submarine cable is made.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the

National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1. Revision No. 01.3

2. Stay §117.183 from [Insert date of publication in the Federal Register] until 5 p.m. on November 30, 2023.

3. Add §117.T184 to read as follows:

§ 117.T184 Old River.

The draw of the California Department of Transportation (Route 4) highway bridge, mile 14.8 between Victoria Island and Byron Tract need not be opened for the passage of vessels.

Michael E. Campbell,
Rear Admiral, U.S. Coast Guard,
Acting Commander, Eleventh Coast Guard District.
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